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8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
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12 SECURITIES AND EXCHANGE  
13 COMMISSION,

14 Plaintiff,

15 vs.

16 JONATHAN WILLIAM MIKULA,  
17 CHRISTIAN FERNANDEZ, AMIT  
18 RAJ BERI, SWAY ENERGY  
19 CORPORATION, AVTAR SINGH  
20 DHILLON, EMERALD HEALTH  
21 PHARMACEUTICALS INC., and  
22 JAMES M. DEMESA

23 Defendants.  
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Case No. 2:22-cv-07096-SB-PLA

**FINAL JUDGMENT AS TO AMIT  
RAJ BERI**

1 The Securities and Exchange Commission having filed a Complaint and  
2 Defendant Amit Raj Beri a/k/a Raj Beri (“Defendant” or “Beri”) having entered a  
3 general appearance; consented to the Court’s jurisdiction over Defendant and the  
4 subject matter of this action; consented to entry of this Final Judgment without  
5 admitting or denying the allegations of the Complaint (except as to jurisdiction);  
6 waived findings of fact and conclusions of law; and waived any right to appeal from  
7 this Final Judgment:

8 **I.**

9 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant is  
10 permanently restrained and enjoined from violating, directly or indirectly, Section  
11 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”) [15 U.S.C. §  
12 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using  
13 any means or instrumentality of interstate commerce, or of the mails, or of any  
14 facility of any national securities exchange, in connection with the purchase or sale of  
15 any security:

- 16 (a) to employ any device, scheme, or artifice to defraud;  
17 (b) to make any untrue statement of a material fact or to omit to state a  
18 material fact necessary in order to make the statements made, in the light of the  
19 circumstances under which they were made, not misleading; or  
20 (c) to engage in any act, practice, or course of business which operates or  
21 would operate as a fraud or deceit upon any person.

22 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as  
23 provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also  
24 binds the following who receive actual notice of this Final Judgment by personal  
25 service or otherwise: (a) Defendant’s officers, agents, servants, employees, and  
26 attorneys; and (b) other persons in active concert or participation with Defendant or  
27 with anyone described in (a).  
28

**II.**

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (the “Securities Act”) [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

(a) to employ any device, scheme, or artifice to defraud;

(b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant’s officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

**III.**

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating Section 17(b) of the Securities Act [15 U.S.C. § 77q(b)] by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, to publish, give publicity to, or circulate any notice, circular, advertisement, newspaper, article, letter, investment service, or communication which, though not purporting to offer a security for sale, describes such security for a consideration received or to be received, directly or indirectly, from an issuer, underwriter, or dealer, without fully

1 disclosing the receipt, whether past or prospective, of such consideration in the  
2 amount thereof.

3 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as  
4 provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also  
5 binds the following who receive actual notice of this Final Judgment by personal  
6 service or otherwise: (a) Defendant's officers, agents, servants, employees, and  
7 attorneys; and (b) other persons in active concert or participation with Defendant or  
8 with anyone described in (a).

9 **IV.**

10 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that  
11 Defendant is permanently restrained and enjoined from violating Section 5 of the  
12 Securities Act [15 U.S.C. § 77e] by, directly or indirectly, in the absence of any  
13 applicable exemption:

- 14 (a) Unless a registration statement is in effect as to a security, making use of  
15 any means or instruments of transportation or communication in  
16 interstate commerce or of the mails to sell such security through the use  
17 or medium of any prospectus or otherwise;
- 18 (b) Unless a registration statement is in effect as to a security, carrying or  
19 causing to be carried through the mails or in interstate commerce, by any  
20 means or instruments of transportation, any such security for the purpose  
21 of sale or for delivery after sale; or
- 22 (c) Making use of any means or instruments of transportation or  
23 communication in interstate commerce or of the mails to offer to sell or  
24 offer to buy through the use or medium of any prospectus or otherwise  
25 any security, unless a registration statement has been filed with the  
26 Commission as to such security, or while the registration statement is the  
27 subject of a refusal order or stop order or (prior to the effective date of  
28 the registration statement) any public proceeding or examination under

1 Section 8 of the Securities Act [15 U.S.C. § 77h].

2 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as  
3 provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also  
4 binds the following who receive actual notice of this Final Judgment by personal  
5 service or otherwise: (a) Defendant's officers, agents, servants, employees, and  
6 attorneys; and (b) other persons in active concert or participation with Defendant or  
7 with anyone described in (a).

8 **V.**

9 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant to  
10 Section 21(d)(5) of the Exchange Act [15 U.S.C. § 78u(d)(5)], Defendant is  
11 permanently restrained and enjoined from, directly or indirectly, participating in a  
12 paid promotional campaign unless an experienced securities lawyer ("Securities  
13 Counsel") reviews the arrangement and affirms in writing that the arrangement is  
14 consistent with applicable U.S. securities laws and regulations. For purposes of this  
15 injunction, "Promotional Campaign" means an effort, the goal of which is to generate  
16 interest in any security by, directly or indirectly, publishing, giving publicity to, or  
17 circulating any form of written communication, whether electronic or hard copy,  
18 which, though not purporting to offer a security for sale, describes such security;.

19 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as  
20 provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also  
21 binds the following who receive actual notice of this Final Judgment by personal  
22 service or otherwise: (a) Defendant's officers, agents, servants, employees, and  
23 attorneys; and (b) other persons in active concert or participation with Defendant or  
24 with anyone described in (a).

25 **VI.**

26 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant  
27 to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)] and Section 20(e) of  
28 the Securities Act [15 U.S.C. § 77t(e)], Defendant is prohibited, for ten (10) years

1 following the date of entry of this Final Judgment, from acting as an officer or  
2 director of any issuer that has a class of securities registered pursuant to Section 12 of  
3 the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to  
4 Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

5 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that  
6 Defendant is liable for disgorgement of \$960,314.96, representing net profits gained  
7 as a result of the conduct alleged in the Complaint, together with prejudgment interest  
8 thereon in the amount of \$38,979.24, and a civil penalty in the amount of \$207,183  
9 pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section  
10 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]. Defendant shall satisfy this  
11 obligation pursuant to the terms of the payment schedule set forth in paragraph VII  
12 below after entry of this Final Judgment.

13 Defendant may transmit payment electronically to the Commission, which will  
14 provide detailed ACH transfer/Fedwire instructions upon request. Payment may also  
15 be made directly from a bank account via Pay.gov through the SEC website at  
16 <http://www.sec.gov/about/offices/ofm.htm>. Defendant may also pay by certified  
17 check, bank cashier's check, or United States postal money order payable to the  
18 Securities and Exchange Commission, which shall be delivered or mailed to

19  
20 Enterprise Services Center  
21 Accounts Receivable Branch  
22 6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

23 and shall be accompanied by a letter identifying the case title, civil action number,  
24 and name of this Court; Defendant Beri as a defendant in this action; and specifying  
25 that payment is made pursuant to this Final Judgment.

26 Defendant shall simultaneously transmit photocopies of evidence of payment  
27 and case identifying information to the Commission's counsel in this action. By  
28 making this payment, Defendant relinquishes all legal and equitable right, title, and

1 interest in such funds and no part of the funds shall be returned to Defendant.

2 The Commission may enforce the Court's judgment for disgorgement and  
3 prejudgment interest by using all collection procedures authorized by law, including,  
4 but not limited to, moving for civil contempt at any time after 30 days following entry  
5 of this Final Judgment.

6 The Commission may enforce the Court's judgment for penalties by the use of  
7 all collection procedures authorized by law, including the Federal Debt Collection  
8 Procedures Act, 28 U.S.C. § 3001 *et seq.*, and moving for civil contempt for the  
9 violation of any Court orders issued in this action. Defendant shall pay post  
10 judgment interest on any amounts due after 30 days of the entry of this Final  
11 Judgment pursuant to 28 U.S.C. § 1961. The Commission shall hold the funds,  
12 together with any interest and income earned thereon (collectively, the "Fund"),  
13 pending further order of the Court.

14 The Commission may propose a plan to distribute the Fund subject to the  
15 Court's approval. Such a plan may provide that the Fund shall be distributed  
16 pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of  
17 2002. The Court shall retain jurisdiction over the administration of any distribution  
18 of the Fund and the Fund may only be disbursed pursuant to an Order of the Court.

19 Regardless of whether any such Fair Fund distribution is made, amounts  
20 ordered to be paid as civil penalties pursuant to this Judgment shall be treated as  
21 penalties paid to the government for all purposes, including all tax purposes. To  
22 preserve the deterrent effect of the civil penalty, Defendant shall not, after offset or  
23 reduction of any award of compensatory damages in any Related Investor Action  
24 based on Defendant's payment of disgorgement in this action, argue that he is entitled  
25 to, nor shall he further benefit by, offset or reduction of such compensatory damages  
26 award by the amount of any part of Defendant's payment of a civil penalty in this  
27 action ("Penalty Offset"). If the court in any Related Investor Action grants such a  
28 Penalty Offset, Defendant shall, within 30 days after entry of a final order granting

1 the Penalty Offset, notify the Commission's counsel in this action and pay the amount  
 2 of the Penalty Offset to the United States Treasury or to a Fair Fund, as the  
 3 Commission directs. Such a payment shall not be deemed an additional civil penalty  
 4 and shall not be deemed to change the amount of the civil penalty imposed in this  
 5 Judgment. For purposes of this paragraph, a "Related Investor Action" means a  
 6 private damages action brought against Defendant by or on behalf of one or more  
 7 investors based on substantially the same facts as alleged in the Complaint in this  
 8 action.

## 9 VII.

10 Defendant shall pay the total of disgorgement, prejudgment interest, and  
 11 penalty due of \$ 1,206,477.20 in five installments to the Commission according to the  
 12 following schedule: (1) \$50,000 within ten days of entry of this Final Judgment; (2)  
 13 \$289,119.30 by December 31, 2022; (3) \$289,119.30 by March 31, 2023; (4)  
 14 \$289,119.30 by June 30, 2023; and (5) \$289,119.30 by September 30, 2023.  
 15 Payments shall be deemed made on the date they are received by the Commission and  
 16 shall be applied first to post judgment interest, which accrues pursuant to 28 U.S.C. §  
 17 1961 on any unpaid amounts due after 30 days of the entry of Final Judgment. Prior  
 18 to making the final payment set forth herein, Defendant Beri shall contact the staff of  
 19 the Commission for the amount due for the final payment.

20 If Defendant fails to make any payment by the date agreed and/or in the  
 21 amount agreed according to the schedule set forth above, all outstanding payments  
 22 under this Final Judgment, including post-judgment interest, minus any payments  
 23 made, shall become due and payable immediately at the discretion of the staff of the  
 24 Commission without further application to the Court.

## 25 VIII.

26 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, solely for  
 27 purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code,  
 28 11 U.S.C. §523, the allegations in the complaint are true and admitted by Defendant,



1 and further, any debt for disgorgement, prejudgment interest, civil penalty or other  
2 amounts due by Defendant under this Final Judgment or any other judgment, order,  
3 consent order, decree or settlement agreement entered in connection with this  
4 proceeding, is a debt for the violation by Defendant Beri of the federal securities laws  
5 or any regulation or order issued under such laws, as set forth in Section 523(a)(19)  
6 of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

7 **IX.**

8 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court  
9 shall retain jurisdiction of this matter for the purposes of enforcing the terms of this  
10 Final Judgment.

11 **X.**

12 There being no just reason for delay, pursuant to Rule 54(b) of the Federal  
13 Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith  
14 and without further notice.

15  
16 Dated: October 20, 2022

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18 \_\_\_\_\_  
19 Stanley Blumenfeld, Jr.  
20 United States District Judge  
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